

Chapter 3.A Confidentiality and Disclosure of Information

- A. With the exception of those instances described below, all information regarding vulnerable adults served by the APS Program is confidential. This section assures their rights of privacy are respected. Any time there is confusion about releasing information or when a subpoena is received by a local office requesting access to APS records, the CFS Specialist will contact the CFS Supervisor and/or Legal Services staff for direction.
- B. Registry Information:
Any requests for information regarding information contained on the registry must be forwarded to Central Office.

Request for information from the registry by the person who allegedly abused, neglected, or exploited a vulnerable adult: See Central Registry Section 463 NAC 1-003.06

- C. Persons or Agencies Allowed Access to Records:
The Department will allow access to Adult Protective Services records to any person legally authorized under Nebraska law.

Persons, officials, and agencies having access to such records include but are not limited to:

1. A law enforcement agency investigating a report of known or suspected abuse;
 2. A county attorney in preparation of an abuse petition;
 3. A physician who has before him/her a person whom s/he reasonably suspects may be abused;
 4. An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;
 5. Defense counsel in preparation of the defense of a person charged with abuse;
 6. Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report is made available to the researcher or auditor;
 7. The designated protection and advocacy system authorized pursuant to federal law and when acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness; and
 8. For purposes of licensing providers of child care programs, the Department of Health and Human Services Regulation and Licensure.
(See Neb Rev. Stat. § 28-377)
- D. The CFS Specialist will not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.
- E. The CFS Specialist may release information necessary for the protection of a vulnerable adult to a Guardian Ad Litem for a vulnerable adult or a court appointed visitor in furtherance of purposes directly related to the Adult Protective Services Act.
- F. Format of Request: The request must be submitted using the Department approved form and must describe with sufficient detail regarding the information sought.

G. Request by or on Behalf of Vulnerable Adult:

1. If the vulnerable adult or guardian requests protected health information to be shared with a third party, a signed Authorization for the Disclosure of Protected Health Information is required to release information.

<http://dhhsemployees/sites/Is/HIPAA/Compliance%20Tools/Forms/AllItems.aspx>

2. If the vulnerable adult or guardian requests other information to be shared with a third party, a signed Authorization to Release Information.
See Form ASD-46
3. The CFS Specialist will not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

H. Upon request, a vulnerable adult who is the subject of a report or the guardian of the vulnerable adult is entitled to receive a copy of all information contained in the registry and the documents produced by DHHS pertaining to his or her case. Material includes electronic case file information. The case file materials may be viewed during normal work hours within five business days of receipt of signed written request. The vulnerable adult may request that the information be mailed rather than instead of physically viewing the material. The information is mailed within five days of the request.

1. If the APS case is closed, then, the CFS Specialist requests that the person submit a signed, written request detailing specifically what information is being requested and submit to Central Office. Prior to the release of any information, the case file is reviewed as to what is prohibited and confidential.
2. If the APS case is open, the CFS Specialist will request a signed, notarized written request to examine the case file. The CFS Specialist requests that vulnerable adult specify what information is needed and for what timeframe. The CFS Specialist reviews the case file with the supervisor to determine what information is prohibited and confidential. Legal services are to be consulted if there are questions about what information may be released.
3. If the investigation is pending, the CFS Specialist will not release information.

I. Summary of Findings and Actions: Upon request, a physician or the person in charge of an institution, facility, or agency making a legally mandated report, must receive a written summary of the findings of and actions taken by the Department in response to such report.

The summary will contain the following:

1. The date of the report;
2. The name of the alleged victim;
3. The name of the alleged perpetrator;
4. The allegations; and
5. The findings.

If the report is substantiated, the summary may include the following:

1. Whether any services were offered and provided by the Department;

2. A description of practices that may have contributed to the abuse, neglect, or exploitation, if identified; and
 3. Recommendations of actions to prevent abuse, neglect, or exploitation and to respond to allegations of abuse, neglect, or exploitation.
- J. Information Sharing within the Department: The Division of Children and Family Services may share confidential information with other DHHS Divisions when necessary - See 465 NAC 2-005.02B for general rules regarding confidentiality and the administrative memo dated March 30, 2012 from CEO, Kerry Winterer.
- K. Prohibited information-
- The following is a list of prohibited or confidential information:
1. Information not produced by DHHS such as:
 - a) Medical records. Information is not released regarding the content of medical records. The CFS Specialist may inform the vulnerable adult where to obtain the medical records;
 - b) Copies of law enforcement reports;
 2. Information that would be detrimental or harmful to the client;
 3. Information from conversations between the CFS Specialist or Supervisor and the Legal Department; and
 4. The identity of the reporting party.
- L. Ombudsman (Neb Rev. Stat. § 81-8,245 Public Counsel; powers; enumerated)
- The Office of the Public Counsel (also known as the State Ombudsman's Office) is an independent complaint-handling office for the use of citizens who have complaints about the actions of administrative agencies of state government, that is, the bureaucracy of state government.
- By investigating and resolving citizens' complaints relating to the actions of state administrative agencies, the Ombudsman's Office seeks not only to provide administrative justice to citizens who have been wronged by state agencies, but also to promote accountability in public administration. Because the Ombudsman's Office is independent of the agencies that it investigates, it can be impartial in disputes between administrative agencies and citizens, and can promote reasonable and informal resolution of citizen grievances. This activity not only improves the relationship between citizens and their government, but it can also play an important role in holding powerful agencies accountable for their actions.
- The CFS Specialist may receive requests for information from the Office of the Public Counsel otherwise known as the Ombudsman's office. When this occurs, the CFS Specialist will contact their Supervisor who may consult with Legal. The CFS Specialist will forward all information in the case file to the Ombudsman's office, except Department attorney-client information. The CFS Specialist will document into N-FOCUS what information was released and when.
- M. Protection and Advocacy System: (See NE Rev. Statute §28-377 (7))
- The CFS Specialist may receive a request for information from the designated Protection and Advocacy which is Disability Rights Nebraska. Once a request is received, the CFS Specialist will submit the request to the Division of Legal and Regulatory Services.

Disability Rights Nebraska is independent of any public or private agency which provides treatment or services to people with disabilities.

N. Court Subpoenas:

Duties upon Receipt of Subpoena: When the CFS Specialist is served a subpoena; s/he must contact his/her supervisor. The supervisor will contact the Department's Legal and Regulatory Services for assistance.